EMER CLAD COATINGS PTE. LTD.

v.

BLASTKOTE PTE. LTD.

HIGH COURT, SINGAPORE
TS SINNATHURAY J
[SUIT NO. 7336 OF 1985]
30 DECEMBER 1987

CIVIL PROCEDURE: *Non-appearance by defendants - Final judgment - Application to have same set aside - Appeal from order on application.*

The plaintiffs obtained final judgment in the sum of $56,655.60 due to the defendants not having entered appearance. The defendants applied to have this set aside on the ground that they had a good defence to the action. At this hearing the Registrar made an order in terms of the application on condition that the defendants, within 14 days of the order, gave a banker's guarantee and in default thereof judgment was to stand. In view of an objection taken by the defendants to the amount of the judgment, the plaintiffs limited their claim to $46,270.40 and the Registrar accordingly reduce the bank guarantee to the sum of $46,270.40. The defendants appealed against the decision.

Held:

[1] It was not improper, in the absence of any agreement requiring a notice of demand for payment before action, for the plaintiffs to issue writ one day after they had given a seven days's notice of demand.

[2] Although it was contended that the plaintiffs had, without a proper application, varied the judgment from $56,655.60 to $46,270.40. No variation had in fact taken place since the Registrar made an order in terms of the application, setting aside the default judgment. The order made by the Registrar was not a variation of the earlier default judgment. In any event the defendants had complied with the order.

[3] Although it was correct that a defendant who sought to set aside a default judgment should file an affidavit of merits, after the judgment was set aside the defendants were not entitled at that stage of the proceedings to a hearing on the merits as in an O. 14 applications.

[Appeal dismissed with costs.]

JUDGMENT

TS Sinnathuray J:

The plaintiffs' claim in the writ of summons is for $56,655.60 for goods sold and delivered by them to the defendants. The defendants not having entered appearance, final judgment was entered for the plaintiffs for the said sum and costs.

The defendants then applied for the judgment in default of appearance to be set aside; they said that they had a good defence to the action. At this hearing, the learned Registrar made an order in terms of the application on condition that the defendants, within 14 days of the order, gave a banker's guarantee and in default thereof the judgment was to stand. Immediately after the order was made, on an objection taken by the defendants to the amount of the judgment, the plaintiffs limited their claim in the sum of $46,270.40. The Registrar accordingly reduced the banker's guarantee to the sum of $46,270.40. It is against this decision that the defendants brought the appeal.

At the hearing, Counsel for the defendants raised three points. First, it was said that it was wrong of the plaintiffs to issue the writ one day after they had given a seven days' notice of demand. I was of the view that in the absence of any agreement between the parties requiring a notice of demand for payment before action, there could be no legal objection to the course of action taken by the plaintiffs. The question of costs, however, was another matter.

Secondly, it was said that the plaintiffs had, without a proper application, varied the judgment from $56,655.60 to $46,270.40. Counsel referred to the order of Court which sets out the decision of the Registrar. It is to be noted that the order of Court drawn by the solicitors for the plaintiffs was approved by the solicitors for the defendants. The material part of the order reads as follows :

> It is Ordered that :
>
> 1) The defendants be granted conditional leave to enter appearance to this action upon providing a banker's guarantee to the extent of the sum of $46,270.40 within fourteen days from the date hereof and in default the Judgment entered on 8 August 1985 be varied to the sum of $46,270.40.

Leaving aside the error in the order of Court : the Registrar had given not "conditional leave" but leave to enter full appearance, the order of Court does not correctly reflect the decision of the Registrar and equally does not comply with the Rules relating to the setting aside of a default judgment. It is clear to me, when the Registrar made an order in terms of the application, he had set aside the default judgment. The result was there was no longer a judgment on record. And, when the Registrar imposed the condition for a banker's guarantee and provided for the default thereof, he was giving the plaintiffs leave to enter a new judgment. Again, on the concession made by the plaintiffs, when the banker's guarantee was reduced to $46,270.40, the liberty to enter a new judgment, as regards the amount, was correspondingly reduced. Thus viewed, the order made by the Registrar was not a variation of the earlier default judgment. Having said that, the submission was, in any event, a pointless one as the defendants had complied with the order; having furnished a bank guarantee and entered appearance, the other half of the order of Court, relating to the entry of judgment, was ineffectual.

The final and last submission for the defendants related to the merits of the proposed defence, and that the defendants had a counterclaim against the plaintiffs. This submission was premature. It is of course correct that a defendant who seeks to set aside a default judgment must file an affidavit of merits. However, once he obtains the order and the judgment is set aside, as in present case, the next step in the action, would be for the plaintiffs to make an application for summary judgment under O. 14. Such an application is in fact pending in this action. In my view, the defendants were not entitled, at this stage of the proceedings, to a hearing on the merits as in an O. 14 application. It would be that at that hearing there will be fuller and further affidavits filed by the plaintiffs and the defendants as well, for the determination of the O. 14 proceedings.

For these reasons, I dismissed the appeal with costs.

Also found at [1988] 2 CLJ 362